Supreme Court, U.S.
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No. 95-691

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

CHRISTOPHER GERALD GLYNN,
Petitioner,

v.

ROY AL BOAT MANAGEMENT CORP.,
DANIEL J. SHAWHAN and F/V NO PROBLEM,
Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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12 pp

LIST OF PARTIES

Christopher Gerald Glynn, Petitioner

Roy Al Boat Management Corp., a Florida family corporation *in personam* and as claimant of the F/V NO PROBLEM, *in rem*, a Respondent

Daniel J. Shawhan, Captain of the F/V NO PROBLEM, a Respondent

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

In opposition to the Petition of Christopher Gerald Glynn for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, the Respondents Roy Al Boat Management Corp., Daniel J. Shawhan and the F/V NO PROBLEM, *in rem*, respectfully show:

STATEMENT OF THE CASE

The statement of the case made by the Petitioner is generally correct except as follows:

1. All of the facts set forth in the Statement of the Case were contested facts. For instance, it is stated that an injury occurred when the Petitioner slipped from a ladder in an ice hold while trying to lift the hatch to exit. Actually, on different occasions, the Petitioner had told four different versions of how the accident occurred, each of which was physically impossible. It was the Respondents' position that no accident occurred.

2. On page three it is stated that there was an agreed extension of time to file answer on condition that Respondents pay Glynn's maintenance and cure. Actually, there was an agreement to pay maintenance for a short period of time, allegedly then past due, and that was paid, but the agreement for extension of time to file answer was an unrelated agreement between trial counsel for their own convenience. A default judgment was taken in violation of that agreement.

3. It was the position of the Respondents in the trial on the merits that the Petitioner was a joint venturer, and not a Jones Act employee. The District Court ruled against this position in part as a matter of law, and submitted it in part to the jury. The Court of Appeals affirmed the District Court's decisions in this respect, and the issue has not been presented to this court. However, it was a justiciable issue.

4. There was substantial evidence that the Petitioner was a malingerer and that no accident, much less an injury, had occurred. For example, another member of the crew, a friend of the Petitioner before he joined the vessel, originally made a statement and subsequently testified by deposition that no injury had been reported to him and that he had no knowledge of any claim of an accident. At trial, he changed this testimony and testified that he and the mate were told of the accident and injury when it occurred. Under all of the

evidence, the jury accepted the Petitioner's relation of the events. Again, however, there was a justiciable issue. It was submitted to the jury.

REASONS FOR DENYING THE WRIT

POINT I : POINT I OF THE PETITION IS A DISCUSSION OF APPLICABLE LAW AND PRESENTS NOTHING FOR THIS COURT TO CONSIDER.

Point I of the petition simply discusses the law applicable to the doctrine of maintenance and cure. None of the statements made therein is particularly controversial as respects this case, but it has no application to the petition for the writ in this case and requires no reply.

POINT II: THERE IS NO CONFLICT OF AUTHORITIES IN THE COURTS OF APPEALS FOR THE SEVERAL CIRCUITS, AND A WRIT OF CERTIORARI SHOULD NOT BE GRANTED ON THAT BASIS.

A. The Petitioner urges that the decisions in this case and in *Guevara vs. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995)(en banc)[1] relying upon this Court's decision in *Miles vs. Apex Marine Corp.*, 498 U.S. 19 (1990) are in conflict with *Hines vs. J.A. Laporte, Inc.*, 820 F.2d 1187 (11th Cir. 1987); *Flores vs. Carnival Cruise Lines, Inc.*, 47 F.3d 1120 (11th Cir. 1995); and *Manuel vs. United States*, 50 F.3d 1253 (4th Cir. 1995). Actually, no conflicts exist in these cases. *Hines vs. J.A. Laporte, Inc.*, in the First Circuit was decided prior to this Court's decision in *Miles vs. Apex Marine Corp.* It does not appear that the Court of Appeals for the First Circuit has considered the

[1] This case is on petition for a writ of certiorari under docket No. 95-676.

issue subsequently to the *Miles* case. In *Flores*, the Court of Appeals for the Eleventh Circuit simply pointed out that the issue was not presented because no wilful and wanton misconduct had been shown. In the absence of that showing, the *Miles vs. Apex* issue was not presented. The same is true of *Manuel vs. United States*. The subject of punitive damages was not involved in the decision. The Court simply held that a seaman injured on a vessel owed by the United States must bring his action against the United States under the Suits in Admiralty Act or the Public Vessels Act as the case may be. That ruling simply conforms to this Court's decision in *Cosmopolitan Shipping Company vs. McAllister*, 337 U.S. 783 (1949).

Accordingly, we see that there is no Court of Appeals decision subsequent to *Miles vs. Apex* which awards punitive damages, or has even discussed the subject of whether punitive damages are recoverable in a maintenance and cure case save and except this case and *Guevara* which are in accord. There is no reason to believe that the Courts of Appeals for the other circuits will disagree with the Courts of Appeals for the Fifth and Ninth Circuits when and if the issue be presented to them.

B. There is no reason to question this Court's decision in *Vaughan vs. Atkinson*, 369 U.S. 527 (1962). In that case this Court held that a seaman is entitled to recover his attorney's fees where the employer's wrongful failure to pay maintenance and cure requires him to employ counsel to collect it. Quite aside from the *Miles vs. Apex* issue, the petitioner urges this Court to review the *Vaughan* case and add to the remedies heretofore fixed by this Court in such cases. No reason has been advanced why this Court's decision in that case does not offer an adequate remedy to seamen in cases where the issue is presented. The statement is made at page 15 of the petition that attorney's fees are not

an adequate deterrent to the bad faith refusal to provide maintenance and cure when it is needed. However, there is no reference to any authoritative source for this statement. Certainly no court nor credible legal publications have pointed out any inadequacies in this Court's decision on that issue.

POINT III: IF THIS PETITION PRESENTS A MERITORIOUS QUESTION FOR CONSIDERATION BY THIS COURT, IT IS IN THE SUGGESTION THAT THE LAW SHOULD GIVE A MORE CLEAR DEFINITION OF A SHIP OWNER'S RIGHTS WITH RESPECT TO MAINTENANCE AND CURE CLAIMS.

In this case the Court submitted to the jury fact questions as to whether any liability of the ship owner existed at all, either for maintenance and cure or for damages. The Court also submitted to the jury the question of whether the ship owner's failure to pay maintenance and cure was wilful and malicious. The submission of these two issues to the same jury presents an obvious prejudice to the ship owner. How can it be fair to the ship owner to ask a jury whether he owes maintenance, and ask the same jury whether his failure to pay the maintenance was malicious? The issue of whether it was malicious presupposes it was owed.

The same issue was presented in a different context to the Court of Appeals for the First Circuit in *Pace vs. Insurance Company of North America*, 838 F.2d 572 (1st Cir. 1988). There an underwriter had denied liability under an insurance policy for the sinking of a fishing vessel. Suit was brought against the underwriter claiming not only the right to recover the value of the hull under the policy, but also claiming punitive damages under state statutes for bad faith refusal to pay the claim. The Court held that where the underwriter had a legitimate basis under the maritime law for

denying the claim, it could not be liable for punitive damages for insisting upon its right to defend. Certainly, that case is decided correctly. The principle upon which it is decided is correct. The same principle should apply to maintenance and cure cases. Where a ship owner has a legitimate basis upon which to deny a maintenance and cure claim, he should not have to run the risk of having to pay either attorney's fees or punitive damages for insisting upon his right to try that legitimate issue. It is a legitimate issue, of course, if it be submitted to the jury, because juries are not asked to decide issues which are not raised legitimately by the evidence. The law should be perfectly plain in the field of maintenance and cure as it has been made by the Court of Appeals for the First Circuit in the law relating to marine insurance that a party cannot be held in bad faith for litigating a legitimate issue.

We do not urge that the writ be granted. The courts below have reached a proper decision on the punitive damage issue. As Petitioner acknowledges, the judgment has been paid, and this litigation has reached its logical conclusion. We perceive it to be our duty, however, under the rules of this Court to bring legitimate issues to the attention of the Court, and a ship owner's right to defend against an illegitimate or apparently phoney claim should remain inviolate without fear of punishment or reprisals. That issue is fairly raised by Petitioner's Point III, but we do not believe it is fairly presented by the record. The correct result has been reached, and this issue has not been considered by either of the lower courts, and accordingly, there is no decision to review.

POINT IV: POINT IV OF THE PETITION PRESENTS AN ARGUMENT OF PUBLIC POLICY WHICH IS NOT RAISED BY THE RECORD.

This appears to be an argument that a magistrate judge should have had the right to order the payment of maintenance in this case as a condition to the ship owner's right to defend. Maintenance and cure is a separate claim, and while it is true that it is often combined with a suit for damages under the Jones Act, it is not always so, and the cause of action for maintenance and cure is a separate one standing on its own merits. The suggestion that courts should have the authority to grant the relief sought by a plaintiff as a summary matter pending a final adjudication on the merits meets itself coming back. Once the claim has been paid, the merits have been disposed of. This argument relates back to the question of a shipowner's right to defend which is discussed above. We have neither the knowledge nor the data from which to discuss the suggestion made in Point IV of the Petition. There certainly is no evidence of a pressing public need for such a rule.

CONCLUSION

For the reasons stated above, Respondents respectfully pray the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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